

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

MFA.No. 144 of 2006()

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WCC.51/2001 of W.C.C.,KOLLAM
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APPELLANT: 1ST OPPOSITE PARTY:

**GENERAL MANAGER,
INDIAN RARE EARTHS LTD., KOVILTHOTTAM, CHAVARA.**

**BY ADV. SRI.ANTONY DOMINIC
SRI.A.M.SHAFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR**

RESPONDENTS: APPLICANTS 1 TO 5 & 2ND OPPOSITE PARTY:

- 1. JAMEELA BEEVI, W/O.JAMALUDEEN KUNJU,
PUZHINJYIL, THEKKETHARA, PALAKKAL, THEVALAKKARA,
KARUNAGAPPALLY.**
- 2. JALEEL J., S/O. JAMALUDEEN KUNJU,
PUZHINJYIL, THEKKETHARA, PALAKKAL,THEVALAKKARA,
KARUNAGAPPALLY.**
- 3. JABBAR J., S/O.JAMALUDEEN KUNJU,
PUZHINJYIL, THEKKETHARA, PALAKKAL, THEVALAKKARA,
KARUNAGAPPALLY.**

(.....2/-)

**4. YASHIR J., S/O.JAMALUDEEN KUNJU,
PUZHINJYIL, THEKKETHARA, PALAKKAL,THEVALAKKARA,
KARUNAGAPPALLY.**

**5. FATHIMA BEEVI, M/O. JAMALUDEEN KUNJU,
PUZHINJYIL, THEKKETHARA, PALAKKAD, THEVALAKKARA,
KARUNAGAPPALLY.**

**6. SUNITHA PADMAJAN,
VENU VIHAR, PAZHIKUZHY, OACHIRA.**

**BY ADV. SRI.K.SUBASH CHANDRA BOSE
SRI.S.SUDHEESHKAR**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

KURIAN JOSEPH,

&

T.R.RAMACHANDRAN NAIR, JJ.

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MFA.No.144 of 2006-D.
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Dated this the 24th day of May, 2007.

J U D G M E N T

Kurian Joseph, J.

This appeal, at the instance of the principal employer, is directed against the judgment dated 19-1-2006 of the Commissioner for Workmen Compensation, Kollam in WCC.No.51 of 2001.

2. To the extent the facts are not disputed by the parties, are as follows:-

One Mr.Jamaludeen Kunju was working under Mr.Padmajan, a contractor under the appellant company. The said worker died in an accident when a Changadam capsized at 2.30 p.m. On 4-2-2000. According to the claimants, the accident occurred during the course of employment. Padmajan died in the meanwhile and his wife was impleaded as the 2nd respondent before the Commissioner and as the 6th respondent herein. The Workmen Compensation Commissioner found that, the relationship between the 1st opposite party and the deceased was as principal employer-employee. Since there is no appeal at the instance of the contractor and since there is no

serious dispute on that on the part of the legal representatives of late Jamaludeen Kunju, that finding has become final. The Workmen Compensation Commissioner awarded a compensation to the tune of Rs.1,78,490/- with 12% interest on the date of accident. Aggrieved, the appeal at the instance of the principal employer.

3. Though several grounds are taken in the appeal, at the time of hearing, what is pressed before us by the appellant is only grounds 'F' and 'G' with regard to the indemnity under Section 12(2) of the Workmen's Compensation Act, 1923. The provision reads as follows:-

“(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.”

4. The statutory provision does not give room to any ambiguity. The principal employer is liable to be indemnified by the contractor against any compensation payable by the principal employer under the provisions of the Workmen's Compensation Act. However, this aspect of the matter has not been considered by the Workmen Compensation Commissioner. We do not think it necessary to remit the matter for that reason.

5. We allow the appeal to the extent of declaring that the appellant is entitled to be indemnified by the contractor. In view of the order as above, we make it clear that it will be open to the legal representatives of late Jamaludeen Kunju to withdraw the amount deposited by the appellant since the appellant is indemnified by the contractor.

KURIAN JOSEPH, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-